Filed 10/25/16 Styles v. Deutsche Bank National Trust Co. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

ADRIENNE STYLES, Plaintiff and Appellant, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee, etc., et al., Defendants and Respondents.	C075117 (Super. Ct. No. PC20120587)

Adrienne Styles executed a deed of trust to secure a loan for the purchase of real property in Placerville, California. Recontrust Company, N.A. (Recontrust) subsequently executed a notice of default and election to sell and initiated a nonjudicial foreclosure sale. The property was sold to Deutsche Bank National Trust Company, as trustee for the holders of the First Franklin Mortgage Loan Trust 2006-FF5, mortgage pass-through certificates, series 2006-FF5 (Deutsche Bank).

Styles filed an action against Deutsche Bank and Mortgage Electronic Registration Systems, Inc. (MERS), the original beneficiary and nominee of the lender under the deed of trust, to set aside the foreclosure sale. The trial court sustained without leave to amend a demurrer brought by Deutsche Bank and MERS.

Styles now contends the foreclosure sale was void because (1) Recontrust was not the trustee under the deed of trust and was not authorized to initiate the foreclosure; (2) the assignments of the deed of trust to Deutsche Bank were invalid because they occurred after the closing date for an unspecified trust; (3) MERS could not assign the deed of trust to Deutsche Bank after the lender (First Franklin) ceased operations; (4) Deutsche Bank was not "a holder in due course"; and (5) the foreclosure laws "were not strictly followed and the Assignments contained fraud."

We conclude Styles fails to demonstrate any error by the trial court.

1. The matters of which the trial court took judicial notice show that Deutsche Bank, holding all beneficial interest in the deed of trust, properly substituted Recontrust as the new trustee. Recontrust had authority to initiate a nonjudicial foreclosure against the property as the trustee or as the agent of the beneficiary.

2. The first amended complaint fails to state any fact to support the conclusory allegations by Styles regarding untimely transfers to a trust, the application of New York law, and fraud.

3. The alleged invalidity of the 2011 assignment to Deutsche Bank does not preclude Deutsche Bank from acquiring a beneficial interest in the note and deed of trust.

4. A beneficiary does not need to possess the underlying promissory note to initiate a nonjudicial foreclosure.

5. We do not consider the undeveloped claims made by Styles regarding violations of the foreclosure statutes and fraud. Styles does not demonstrate a reasonable possibility that she can further amend her complaint to state a cause of action for wrongful foreclosure.

We will affirm the judgment.

BACKGROUND

We draw the following facts from the first amended complaint and the matters of which the trial court took judicial notice.

Styles resides at a property in Placerville. She executed a deed of trust to secure a $599,200 loan in relation to the property. The deed of trust named Styles as the borrower, First Franklin as the lender, Placer Title as the trustee, and MERS as the nominee for the lender and the lender's successors and assigns. The deed of trust identified the beneficiary as MERS, acting as the nominee for the lender and the lender's successors and assigns, and the successors and assigns of MERS.

Through the deed of trust, Styles "irrevocably grant[ed] and convey[ed] to [the] Trustee, in trust, with power of sale, the . . . property." The deed of trust also provided for the substitution of the trustee and for the lender's power of sale upon the borrower's default.

MERS executed a substitution of trustee in relation to the deed of trust on March 26, 2008. MERS substituted the original trustee Placer Title with a new trustee, Cal-Western Reconveyance Corporation.

Shortly thereafter, MERS executed an "Assignment of Deed of Trust," assigning all beneficial interest, "together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust" to Deutsche Bank. That document was recorded with the El Dorado County Recorder on May 15, 2008. MERS executed a second "Assignment of Deed of Trust" to Deutsche Bank on August 23, 2011. The second assignment was recorded with the El Dorado County Recorder on August 31, 2011.

Deutsche Bank substituted Recontrust as the new trustee under the deed of trust about three months after the second assignment was recorded. On the same date it was named substitute trustee, Recontrust executed a notice of default and election to sell

under the deed of trust. The substitution of trustee and the notice of default were recorded with the El Dorado County Recorder on December 2, 2011.

Recontrust executed a notice of trustee's sale in relation to the deed of trust on May 14, 2012. The notice of trustee's sale was recorded with the El Dorado County Recorder on May 16, 2012. A foreclosure sale occurred on October 11, 2012 and the property was sold to Deutsche Bank. Recontrust executed a trustee's deed upon the sale granting the property to Deutsche Bank.

Styles filed a complaint for wrongful foreclosure against Deutsche Bank and MERS. Deutsche Bank and MERS demurred to the complaint and the trial court sustained the demurrer with leave to amend.

Styles filed a first amended complaint, alleging the foreclosure sale was void and no tender was required to set it aside because Recontrust had no authority to foreclose upon the property. Styles alleged there was a missing substitution of trustee from Placer Title (as the original lender) and MERS (as the original beneficiary) to Recontrust (as successor trustee). She attached a copy of the following documents to her first amended complaint: (1) substitution of trustee substituting Cal-Western Reconveyance Corporation as the trustee, (2) substitution of trustee substituting Recontrust as the trustee, (3) assignment of the deed of trust to Deutsche Bank, and (4) second assignment of the deed of trust to Deutsche Bank.

Deutsche Bank and MERS demurred to the first amended complaint, arguing (1) Recontrust had the authority to record the notice of default and notice of trustee's sale because Deutsche Bank, acting as the beneficiary under the deed of trust, substituted Recontrust as the trustee; (2) Styles could not set aside the foreclosure sale because she failed to tender or allege tender of the amounts due and owing on her loan; (3) Styles failed to establish an impropriety in the nonjudicial foreclosure sale; (4) she lacked standing to challenge defendants' authority to exercise the power of sale under the deed

of trust; and (5) she was not entitled to injunctive relief because she failed to plead a wrongful foreclosure cause of action.

Deutsche Bank and MERS asked the trial court to take judicial notice of (1) the deed of trust, (2) the notice of default, (3) the notice of trustee's sale, (4) the trustee's deed upon sale, and (5) the documents attached to the first amended complaint.

Styles opposed the demurrer. She argued (1) the trial court should deem the allegations in her complaint as true; (2) defendants did not comply with Civil Code section 2923.5; (3) the foreclosure sale was void and tender was not required because Placer Title did not execute a substitution of trustee naming Recontrust as the trustee; (4) the assignment recorded on August 31, 2011, was invalid because First Franklin was no longer in existence on that date; and (5) her causes of action were not uncertain. Styles requested leave to amend if the trial court deemed that she could state a good cause of action, but she did not specify how she would amend her complaint.

The trial court determined that judicially noticed matters showed Recontrust was the trustee under the deed of trust, and Recontrust had the authority to sell the property at a trustee's sale and execute the trustee's deed upon sale. Because the sole ground for the wrongful foreclosure cause of action was the alleged missing substitution of trustee, and the matters of which the trial court took judicial notice were inconsistent with that allegation, the trial court ruled the wrongful foreclosure cause of action was defective. In addition, Styles could not state a viable claim for wrongful foreclosure because she did not tender the amount she owed under her loan. The trial court sustained the demurrer without leave to amend, noting that Styles had two opportunities to state a wrongful foreclosure cause of action and there did not appear to be a reasonable possibility that she could cure her complaint by further amendment. The trial court entered a judgment of dismissal in favor of Deutsche Bank and MERS and against Styles. Styles appeals from that judgment.

Styles filed a motion for relief under Code of Civil Procedure section 473, subdivision (b) on October 8, 2013. The trial court denied that motion for lack of jurisdiction because it had already entered a judgment of dismissal in the case. Contrary to the claim in her appellate reply brief, Styles did not file a notice of appeal seeking review of the order denying her Code of Civil Procedure section 473 motion.

An order denying relief under Code of Civil Procedure section 473 is separately appealable. (*Winslow v. Harold G. Ferguson Corp*. (1944) 25 Cal.2d 274, 282; *Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 927, fn. 6.) We have no jurisdiction to review a separately appealable order where no notice of appeal expressly specifies that order. (*Sole Energy Co. v. Petrominerals Corp*. (2005) 128 Cal.App.4th 212, 239 ["A notice of appeal from a judgment alone does not encompass other judgments and separately appealable orders."]; *DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 43; *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46.) Accordingly, our review is limited to the judgment of dismissal arising from the order sustaining the demurrer to the first amended complaint without leave to amend.

STANDARD OF REVIEW

A demurrer tests the legal sufficiency of the challenged pleading. (*Milligan v. Golden Gate Bridge Highway & Transportation Dist*. (2004) 120 Cal.App.4th 1, 5 (*Milligan*).) The standard of review for an order of dismissal following the sustaining of a demurrer is well established. We independently evaluate the challenged pleading, construing it liberally, giving it a reasonable interpretation, reading it as a whole, and viewing its parts in context. (*Id.* at pp. 5-6.) We assume the truth of all material facts properly pleaded or implied and consider judicially noticed matter, but we do not assume the truth of contentions, deductions, or conclusions of law. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 966-967 (*Aubry*).)

We may take judicial notice of the existence and legal effect of a recorded deed of trust, assignment of deed of trust, substitution of trustee, notice of default and of trustee's sale, and trustee's deed upon sale. (*Yvanova v. New Century Mortgage Corp*. (2016) 62 Cal.4th 919, 924, fn. 1 (*Yvanova*) [but we do not take notice of disputed or disputable facts stated in such documents]; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1054-1055, & fn. 1 (*Intengan*).) We may also take notice of exhibits attached to the challenged pleading. (*Holland v. Morse Diesel Internat., Inc*. (2001) 86 Cal.App.4th 1443, 1447, superseded by statute on other grounds as stated in *White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 521.) We accept as true the facts alleged in the challenged pleading and the facts appearing in exhibits attached to it. (*Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567.) If the facts appearing in the exhibits contradict those alleged in the challenged pleading, the facts in the exhibits take precedence. (*Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035, 1044-1045 (*Banis Restaurant*).) We disregard those allegations in the challenged pleading which contradict judicially noticed facts. (*Intengan, supra*, 214 Cal.App.4th at pp. 1054-1055.) Viewing matters through this prism, we determine de novo whether the factual allegations of the challenged pleading are adequate to state a cause of action under any legal theory. (*Milligan, supra*, 120 Cal.App.4th at p. 6.) We will affirm the judgment if proper on any grounds stated in the demurrer, whether or not the trial court acted on that ground. (*Carman v. Alvord* (1982) 31 Cal.3d 318, 324.) The appellant bears the burden of demonstrating the demurrer was sustained erroneously. (*Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1485.)

If the trial court sustained the demurrer, we consider whether the challenged pleading might state a cause of action if the appellant were permitted to amend. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) If the complaint could be amended to state a cause of action, the trial court abused its discretion in denying leave to amend and we will

reverse; if not, there has been no abuse of discretion and we will affirm. (*Ibid*.) A plaintiff can demonstrate the manner in which the complaint can be amended to cure a defect for the first time on appeal. (*Ross v. Creel Printing & Publishing Co*., Inc. (2002) 100 Cal.App.4th 736, 748; *Dudley v. Department of Transportation* (2001) 90 Cal.App.4th 255, 260.) The appellant bears the burden of showing a reasonable possibility that a defect can be cured by amendment. (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.)

DISCUSSION

I

Styles contends the foreclosure sale is void because Recontrust was not the trustee under the deed of trust and was not authorized to initiate the foreclosure.

A

We begin with a general overview of deeds of trust and the nonjudicial foreclosure process. "A deed of trust to real property acting as security for a loan typically has three parties: the trustor (borrower), the beneficiary (lender), and the trustee. 'The trustee holds a power of sale. If the debtor defaults on the loan, the beneficiary may demand that the trustee conduct a nonjudicial foreclosure sale.' [Citation.] The nonjudicial foreclosure system is designed to provide the lender-beneficiary with an inexpensive and efficient remedy against a defaulting borrower, while protecting the borrower from wrongful loss of the property and ensuring that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser. [Citation.] [¶] The trustee starts the nonjudicial foreclosure process by recording a notice of default and election to sell. [Citation.] After a three-month waiting period, and at least 20 days before the scheduled sale, the trustee may publish, post, and record a notice of sale. [Citations.] If the sale is not postponed and the borrower does not exercise his or her rights of reinstatement or redemption, the property is sold at auction to the highest bidder. [Citations.] Generally speaking, the foreclosure sale extinguishes the borrower's debt; the lender may recover

no deficiency. [Citations.]" (*Yvanova, supra*, 62 Cal.4th at pp. 926-927, fn. omitted.) The mortgagee, beneficiary, or an authorized agent of the trustee, mortgagee or beneficiary may also record a notice of default. (Civ. Code, § 2924, subd. (a)(1).)

Civil Code sections 2924 through 2924*l* set forth the comprehensive scheme for a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust. (*Garfinkle v. Superior Court* (1978) 21 Cal.3d 268, 278, superseded by statute on other grounds as stated in *Estates of Yates* (1994) 25 Cal.App.4th 511, 519; *Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830.) That statutory scheme is intended to be exhaustive. (*Moeller*, at p. 834; see also *I. E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285.) Consequently, California appellate courts have refused to read any additional requirements into the nonjudicial foreclosure statutes. (*Gomes v. Countrywide Home Loans, Inc*. (2011) 192 Cal.App.4th 1149, 1154.) Appellate courts presume that a nonjudicial foreclosure sale was conducted regularly. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 105 (*Lona*); *Melendrez v. D & I Investment, Inc*. (2005) 127 Cal.App.4th 1238, 1258.) The party challenging a nonjudicial foreclosure sale bears the burden of rebutting the presumption of regularity by presenting substantial evidence of prejudicial procedural irregularity. (*Lona, supra,* 202 Cal.App.4th at p. 105; *Melendrez, supra,* 127 Cal.App.4th at p. 1258.)

B

As a threshold matter, Deutsche Bank claims Styles lacks standing to challenge whether a foreclosing entity was a proper party to foreclose under a deed of trust. The California Supreme Court recently rejected the lack of standing argument, holding that the borrower on a home loan secured by a deed of trust who has suffered a nonjudicial foreclosure has standing to sue for wrongful foreclosure based on an allegedly void assignment of the note and deed of trust -- i.e., that the foreclosing entity lacked authority to pursue foreclosure -- even if the borrower is in default on the loan and is not a party to the challenged assignment. (*Yvanova, supra*, 62 Cal.4th at pp. 924, 935, 939.)

Accordingly, we proceed to consider the first basis for Styles's wrongful foreclosure cause of action.

C

It appears Styles is arguing that, in order to substitute Recontrust as the new trustee, there must have been a substitution of trustee from Placer Title (the original trustee) and MERS (the original beneficiary) naming Recontrust as the substitute trustee. Styles argues such a substitution was not presented. Therefore, she contends Recontrust did not have authority to foreclosure under the deed of trust.

A wrongful foreclosure cause of action may arise when a person or entity initiates a nonjudicial foreclosure but has no authority to do so. (*Yvanova, supra,* 62 Cal.4th at pp. 929, 935; *Lona, supra,* 202 Cal.App.4th at p. 104.) We conclude, however, that matters of which the trial court took judicial notice contradict Styles's allegation about a missing substitution of trustee.

The trial court properly took judicial notice of the recorded deed of trust, substitutions of trustee, and assignments of the deed of trust. (*Yvanova, supra,* 62 Cal.4th at p. 924, fn. 1.) The deed of trust names MERS as the beneficiary and the nominee of the lender and the lender's successors and assigns. We take judicial notice of those legally operative effects of the deed of trust. (*Intengan, supra,* 214 Cal.App.4th at pp. 1054-1055, & fn. 1.)

The deed of trust authorized MERS to assign the deed of trust. (*Herrera v. Federal National Mortgage Assn.* (2012) 205 Cal.App.4th 1495, 1504 (*Herrera*) [deed of trust containing language identical to that found in this case], disapproved on other grounds in *Yvanova, supra,* 62 Cal.4th at p. 939, fn. 13.) MERS assigned all beneficial interest in the deed of trust, together with the note, to Deutsche Bank. Deutsche Bank, having been assigned all beneficial interest in the deed of trust, was authorized to execute a substitution of trustee replacing Recontrust as the new trustee. (Civ. Code, § 2934a, subd. (a)(1).) That is what Deutsche Bank did on November 30, 2011. Civil Code

section 2934a does not require the former beneficiary and the original trustee to also execute the substitution of trustee.

Recontrust was authorized to act as the trustee under the deed of trust for all purposes from the date the substitution was executed by Deutsche Bank, November 30, 2011. (Civ. Code § 2934a, subd. (d); *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 15 (*Ram*); *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1495 (*Rossberg*).) The substitution of trustee naming Recontrust as the new trustee was recorded concurrently with the recording of the notice of default. Once recorded, the substitution is conclusive evidence of the authority of Recontrust to act as the trustee. (Civ. Code § 2934a, subd. (d); *Ram, supra*, 234 Cal.App.4th at p. 16.) Through the deed of trust, Styles irrevocably granted to the trustee the power of sale of the property. Recontrust was, thus, authorized to record a notice of default and election to sell in order to initiate the foreclosure. (Civ. Code, § 2924, subd. (a)(1); *Rossberg, supra,* 219 Cal.App.4th at p. 1492.)

Recontrust was also authorized to record a notice of default and election to sell as an agent of the beneficiary. (Civ. Code, § 2924, subd. (a)(1); *Intengan, supra,* 214 Cal.App.4th at p. 1055.) The notice of default and election to sell states that Recontrust was acting as an agent of the beneficiary. Styles does not allege that Deutsche Bank did not authorize Reconstruct to initiate the foreclosure as its agent. (*Ram, supra,* 234 Cal.App.4th at pp. 13-14 [rejecting argument that Aztec Foreclosure Corporation did not have authority to execute the notice of default where the challenged pleading affirmatively alleged that Aztec was acting as the agent of the beneficiary]; *Rossberg, supra*, 219 Cal.App.4th at pp. 1496-1497 [to state a claim based on the purported lack of authority by Cal-Western Reconveyance Corporation to record the notice of default, the plaintiffs had to allege not only that Cal-Western was not the trustee under the deed of trust but also that Cal-Western was not the agent of the trustee or beneficiary].)

In sum, the matters of which the trial court took judicial notice show that Deutsche Bank, holding all beneficial interest in the deed of trust, properly substituted Recontrust as the new trustee. (Civ. Code, § 2934a, subd. (a)(1); *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 764.) We disregard the contradictory allegation in the first amended complaint that a link in the chain of assignments and substitutions leading to Recontrust is missing and that Recontrust had no authority to initiate a nonjudicial foreclosure against the property. (*Banis Restaurant, supra*, 134 Cal.App.4th at pp. 1044-1045; *Intengan, supra*, 214 Cal.App.4th at p. 1054.)

Styles says we must accept as true the allegation in her first amended complaint that the foreclosure sale is void and not merely voidable. Not so. "[A]n allegation that an instrument is 'illegal,' 'unauthorized,' or 'void' is but a conclusion of law." (*Burlingame v. Traeger* (1929) 101 Cal.App. 365, 369; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 329 [allegation that the acts of a commission or board were " 'arbitrary, capricious, fraudulent, wrongful and unlawful' " are mere conclusions of law].) We do not assume the truth of conclusions of law found in the challenged pleading. (*Aubry, supra*, 2 Cal.4th at p. 967.)

The trial court did not err in sustaining the demurrer based on the authority of Recontrust to initiate foreclosure as the new trustee under the deed of trust. We also find no error in the denial of leave to amend because Styles fails to demonstrate a reasonable possibility that she can further amend her complaint to plead facts showing that Recontrust was not properly substituted as the trustee.

II

Styles also appears to argue that the assignments of the deed of trust to Deutsche Bank are void and the foreclosure sale is, therefore, invalid because the assignments occurred after the closing date for "the Trust." Styles does not specify what trust she references. She says "the Trust" is governed by New York law.

Deutsche Bank responds that Styles forfeited her appellate claim because she did not raise it in the trial court. The first amended complaint did not allege facts concerning a late assignment or transfer of the deed of trust, and the opposition to demurrer filed by Styles also did not include facts concerning an alleged untimely transfer to a trust. Styles eventually did raise this appellate claim in the trial court, but she did so in her motion for relief under Code of Civil Procedure section 473, which is not before us. In her appellant's opening brief, Styles merely cites, without discussion or analysis, *Glaski v. Bank of America, N.A.* (2013) 218 Cal.App.4th 1079 (*Glaski*) and *Wells Fargo Bank, N.A. v. Erobobo* (N.Y. 2013) 972 N.Y.S.2d 147 (*Erobobo*), an unreported New York state court decision. Even if we were to consider her argument as presenting a pure question of law (*Koch v. Rodlin Enterprises* (1990) 223 Cal.App.3d 1591, 1595), the argument would be forfeited because Styles does not explain how the cited cases apply here. (*Tilbury Constructors, Inc. v. State Comp. Ins. Fund* (2006) 137 Cal.App.4th 466, 482 (*Tilbury Constructors*) [citing cases without discussion of their application to the present case results in forfeiture]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 (*Badie*) [point not supported with reasoned argument is forfeited].) The argument would also be unavailing in any event because there are no allegations to support it. The holding in *Glaski* and the trial court order in *Erobobo* were based on averments or evidence about the creation of trusts and pooling and servicing agreements and the closing dates for those particular trusts. (*Glaski*, *supra*, 218 Cal.App.4th at pp. 1096-1097; *Erobobo*, *supra*, 972 N.Y.S.2d 147.) There are no allegations that those trusts are involved in this case. And no facts similar to those in *Glaski* or *Erobobo* are alleged in the first amended complaint.

The first amended complaint refers to the First Franklin Mortgage Loan Trust. We find no other reference to a trust in the first amended complaint. The first amended complaint contains no factual allegation about the creation of the First Franklin Mortgage Loan Trust, a pooling and servicing agreement or closing date for that trust.

In her appellate reply brief, Styles cites *Conlin v. Mortgage Elec. Registration Sys.* (6th Cir. 2013) 714 F.3d 355 and *Gilbert v. Chase Home Finance, LLC* (E.D.Cal. May 28, 2013, No. 13-cv-265 AWI SKO) 2013 U.S.Dist. Lexis 74772 for the proposition that the assignments of the deed of trust are void "for violation of Real Estate Mortgage Investment Conduit (REMIC) Trust requirements." The cited cases do not discuss REMIC trust requirements. And again, the point is forfeited because Styles does not explain how the cited cases apply here. (*Tilbury Constructors, supra,* 137 Cal.App.4th at p. 482; *Badie, supra*, 67 Cal.App.4th at pp. 784-785.)

Styles asserts that the alleged untimely transfer of her deed of trust into "the Trust" constitutes fraud. She recites the general proposition that it is an abuse of discretion for the court to deny leave to amend where there is a reasonable possibility that the plaintiff can state a cause of action. However, Styles does not describe what facts she can allege to support her conclusory assertions about untimely transfers, the application of New York law, and fraud. She fails to explain in what manner she can amend the challenged pleading to allege facts with regard to the First Franklin Mortgage Loan Trust or some other trust pertinent to the October 11, 2012 foreclosure sale which are like the facts in *Glaski* or *Erobobo*. Styles "must 'clearly and specifically' set forth the legal authority for the claims [she] contend[s] [she] can allege, the elements of each of those claims, and the specific factual allegations that would establish each of those elements." (*Rossberg, supra*, 219 Cal.App.4th at p. 1504.) She may not merely assert an " 'abstract right to amend.' " (*Ibid.*) Moreover, heightened pleading requirements apply to a fraud cause of action. (*Glaski, supra,* 218 Cal.App.4th at p. 1090; *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.) "[F]raud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) We find no abuse of discretion in the trial court's decision to sustain the demurrer without leave to amend as Styles fails to demonstrate a reasonable possibility that she can cure the defects in her first amended complaint by further amendment.

III

Styles next argues that the assignment of the deed of trust by MERS to Deutsche Bank on August 31, 2011, is invalid because the lender under the deed of trust (First Franklin) was no longer in existence on that date.

Exhibit C to the first amended complaint shows that MERS assigned all of the beneficial interest in the deed of trust together with the note to Deutsche Bank in 2008. The first amended complaint does not plead facts showing, and Styles does not contend, that the 2008 assignment was invalid. With regard to the dissolution of First Franklin, Styles merely challenges the validity of the 2011 assignment. But the 2008 assignment authorized Deutsche Bank to substitute Recontrust as the trustee under the deed of trust. (Civ. Code, § 2934a, subd. (a)(1).)

Additionally, even if Deutsche Bank did not acquire beneficial interest in the note and deed of trust through an assignment from MERS, acting as a nominee for First Franklin, Styles does not allege or contend that Deutsche Bank did not obtain a beneficial interest in the note and deed of trust by any other means. The deed of trust makes MERS the nominee for the successors and assigns of First Franklin. Styles does not allege or contend that MERS was not acting as the nominee for a successor or assign of First Franklin when MERS executed the 2011 assignment. First Franklin could also have assigned the note in an unrecorded document not disclosed to Styles. (*Herrera, supra*, 205 Cal.App.4th at p. 1506; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 271-272 [assignments of debt, as opposed to assignments of the deed of trust, are commonly not recorded], disapproved on other grounds in *Yvanova, supra,* 62 Cal.4th at p. 939, fn. 13; see also *Yvanova,* at p. 927 [a promissory note is a negotiable instrument the lender may sell without notice to the borrower; the deed of trust is inseparable from the note it secures and follows it even without a separate assignment].) In order to allege that Deutsche Bank held no interest in the note or deed of trust, Styles must plead not only that MERS did not properly assign the deed of trust to Deutsche Bank in 2011, but

also that Deutsche Bank did not receive an assignment of the debt in any other manner. (*Herrera, supra*, 205 Cal.App.4th at p. 1506; *Fontenot, supra*, 198 Cal.App.4th at pp. 271-272.) Styles makes no such allegation.

Further, the argument Styles makes is identical to the claim rejected in *Herrera, supra*, 205 Cal.App.4th 1495, *Ghuman v. Wells Fargo Bank, N.A.* (E.D.Cal. 2013) 989 F.Supp.2d 994, and other cases. (*Herrera, supra*, 205 Cal.App.4th at pp. 1501-1506; *Bryer v. U.S. Bank N.A.* (N.D.Cal. Dec. 22, 2015, No. 15-cv-00378-PSG) 2015 U.S.Dist. Lexis 171702; *Halajian v. Deutsche Bank National Trust Co.* (E.D.Cal. Jan. 9, 2015, No. 12-cv-00814-AWI-GSA) 2015 U.S.Dist. Lexis 2717; *Ghuman, supra*, 989 F.Supp.2d at pp. 997-1002.) Like the borrowers in *Herrera* and *Ghuman*, Styles agreed in the deed of trust that MERS held the beneficial interest in the deed of trust with all of the rights thereunder. Styles does not allege that MERS was no longer the beneficiary under the deed of trust or the nominee of the lender and the lender's successors and assigns after First Franklin allegedly ceased operations. The deed of trust authorized MERS to assign the note and deed of trust in 2011, even if First Franklin was no longer in existence. (*Herrera, supra*, 205 Cal.App.4th at pp. 1501-1506; *Ghuman, supra*, 989 F.Supp.2d at pp. 997-1002.) Styles does not demonstrate how she can amend the challenged pleading to state a cause of action based on First Franklin's alleged dissolution.

IV

Styles further asserts that the foreclosure sale is invalid because Deutsche Bank was not "a holder in due course."

Styles does not explain what she means by "holder in due course." To the extent she claims Deutsche Bank must physically possess the note, other courts have rejected that argument. (*Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) 219 Cal.App.4th 75, 84, fn. 5 [there is no legal basis for the claim that the foreclosing party must possess the original note], disapproved on other grounds in *Yvanova, supra*, 62 Cal.4th at p. 939, fn. 13; *Jenkins v. JPMorgan Chase Bank, N.A.* (2013)

216 Cal.App.4th 497, 510, 513, disapproved on other grounds in *Yvanova*, *supra*, 62 Cal.4th at p. 939, fn. 13; *Shuster v. BAC Home Loans Servicing, LP* (2012) 211 Cal.App.4th 505, 511 [rejecting claim that defendants had no right to foreclose because they were not the " 'holder in due course' " of the promissory note]; *Debrunner v. Deutsche Bank National Trust Co*. (2012) 204 Cal.App.4th 433, 440; *Herrejon v. Ocwen Loan Servicing, LLC* (E.D.Cal. 2013) 980 F.Supp.2d 1186, 1200; *Rodriguez v. JP Morgan Chase & Co*. (S.D.Cal. 2011) 809 F.Supp.2d 1291, 1297.) A beneficiary does not need to possess the underlying promissory note to initiate a nonjudicial foreclosure. (*Debrunner, supra,* 204 Cal.App.4th at pp. 440-441.) The nonjudicial foreclosure statutes broadly allow a trustee, mortgagee, beneficiary, or any of their agents to initiate nonjudicial foreclosure. (*Ibid.* [refusing to engraft onto the comprehensive procedures governing nonjudicial foreclosures an additional requirement that the initiating entity also be the holder in due course of the accompanying promissory note].) Recontrust had the authority to initiate the foreclosure as the trustee under the deed of trust or as the agent of the beneficiary. (Civ. Code, § 2924, subd. (a)(1).)

We conclude the trial court did not err in sustaining the demurrer without leave to amend because the law does not require possession of the underlying promissory note.

V

Styles claims the foreclosure laws "were not strictly followed and the Assignments contained fraud."

Other than asserting impropriety in the 2011 assignment of the deed of trust after First Franklin ceased operations and that Deutsche Bank was not a holder in due course -- claims we have already addressed -- Styles does not explain how the foreclosure laws "were not strictly followed" and she does not state how the assignments of the deed of trust contain fraud. We do not consider undeveloped claims. (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984-985 [" '[a]n appellate court is not required to examine undeveloped claims, nor to make arguments for parties.' "]; *Badie, supra,* 67 Cal.App.4th

at pp. 784-785 [points not supported with reasoned argument and citations to authority are forfeited].)

Because we affirm the judgment on other grounds we do not consider the claim of Deutsche Bank that Styles must also allege tender of the amount due on her loan to state a wrongful foreclosure cause of action.

DISPOSITION

The judgment is affirmed.

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
HOCH, J.